IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6766 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIPAK M DHARKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6766 of 2002

MR DHARMESH V SHAH for Petitioner No. 1

MR PD BHATE AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/07/2003

ORAL JUDGEMENT

#. Heard learned advocate Mr.Dharmesh Shah appearing on behalf of the petitioner and learned AGP Mr.P.D.Bhate for respondents.

Rule. Learned AGP Mr.Bhate waives service of Rule on behalf of the respondents.

Affidavit-in-reply is filed by the respondents, against which, Rejoinder is filed by the petitioners.

#. When this matter is taken for up for hearing, learned AGP Mr.Bhate for the respondents placed on record the result of the departmental examination for the post of Work Assistant wherein the petitioner had appeared and declared to have passed the said examination. However, this fact is also stated in para-11 of the reply.

#. The grievance of the present petitioner is that initially he was appointed as Daily wager on 22nd September, 1980 and thereafter, he was appointed as Workcharge Clerk on date 21st September, 1985. Thereafter, the petitioner had requested the respondent authorities to give benefits of Government Resolution dated 9th July, 1987 from the post of Work Charge Clerk to Work charge Assistant. It is also contention raised by the petitioner that similar benefits of promotion from the post of workcharge Clerk to workcharge Assistant has been given to the juniors of the petitioner as mentioned in Annexure-C. Thereafter, notice has been served on the respondent on 14th December, 1999 and juniors were promoted on 15th October, 1999. The petitioner had completed training and passed the same on 8th January, 2002. However, answer given by the respondent in para-11 of the reply that the petitioner is not entitled to benefits of the Government Resolution dated 9th July, 1987 because he had never worked as Technical Person precisely as Karkoon / Mistri, Sub Oversear or Technical Assistant and therefore, Resolution dated 9th July, 1987 has no application in the instant case.

#. Learned advocate Mr.Dharmesh Shah has submitted that promotion order which has been passed by the respondent dated 15th October, 1999, wherein all the Workcharge Clerks have been promoted who have passed examination wherein the juniors to the petitioners are at Sr.No.10, 11, 12, 13, 14, and 15. He also submitted that for getting the promotion from Workcharge Clerk to Workcharge Assistant for ten years service as Karkoon / Mistri is necessary and according to him, present petitioner is satisfying that requirement because he was working as Workcharge Clerk with effect from 29th September, 1985. Therefore, he is entitled to similar benefits which have been extended to the juniors employees of the petitioner by the respondents. He also pointed out from the seniority list produced by the petitioner at page.37,

name of the petitioner is at Sr.No.2 and rest of the persons at Sr.No.3 to 5 and 8 to 10 who are juniors to the petitioner according to the seniority list and they were all given promotion on the post of Work charge Assistant by the respondents because they have passed the departmental examination.

#. Learned AGP Mr.Bhate, in light of these facts which are on record, not able to dispute the said position because these are the office orders and seniority list produced by the petitioner. Therefore, relying on these orders and seniority list wherein the respondents have given promotion to the juniors on passing the departmental examination. However, learned AGP Mr.Bhate is not able to dispute this situation before this Court.

#. Therefore, in light of these facts and undisputed situation between the parties, that the petitioner who was appointed as Workcharge Clerk since 21st September, 1985 has passed the departmental examination on 8th January, 2002 and completed more than 10 years service as Workcharge Clerk and he is senior to the employees listed at Page.15 - Annexure-C Sr.No.10 to 15 who are already promoted as the Workcharge Assistant with effect from 23rd February, 1997 and 15th June, 1998. Therefore, learned advcoate Mr.Shah submitted that accordingly the petitioner is entitled to same benefits as the petitioner has already passed the departmental examination on 8th January, 2002.

#. In view of above facts and circumstances of the case and considering the documents which are on record and the undisputed facts between the parties, according to my opinion, the petitioner now being qualified, is entitled for the promotion on the post of Workcharge Assistant, as per the Government Resolution dated 9th July, 1987 from the date on which the petitioner has passed the departmental examination on 8th January, 2002 because that was the condition for getting promotion in the post of Workcharge Assistant which is now satisfied by the petitioner and therefore, the petitioner is entitled to such benefits from 8th January, 2002 accordingly.

#. Learned advocate Mr.Shah has requested that not to grant benefits of promotion to the petitioner for the post of Workcharge Assistant from the date the juniors to the petitioner have been promoted and it will be granted with effect from 8th January, 2002 from the date of passing of the examination, will affect adversely the case of the petitioner in the matter of seniority and

even in case of further promotion to the petitioner. However, replying to this contention of the learned advcoate Mr.Shah, it is observed that the petitioner has submitted application to the respondent to send him for training as well as departmental examination and that request was turned down by the respondents but no action was taken by the petitioner against rejection of said request at the relevant time and as such, there was no challenge by the petitioner before the Court and the petitioner has remained silent for the entire period upto 2002. Therefore, petitioner who remained inactive and not filed any proceedings immediately against rejection of the request, naturally, the petitioner is not entitled to such relief with retrospective effect because the petitioner has cleared the examination on 8th January, 2002. Therefore, the petitioner is entitled to promotion in the post of Workcharge Assistant with effect from 8th January, 2002 only.

In the result, present petition succeeds and the same is allowed to the extent indicated above. The respondents are directed to promote the petitioner in the post of Workcharge Assistant according to the Government Resolution dated 9th July, 1987 with effect from 8th January, 2002 and fix his salary according to the scale which available to the post of Workcharge Assistant and pay him the difference of salaries with effect from 8th January, 2002 till the date of actual promotion order issued by the respondent authorities. It is further directed to the respondents to pay the difference of salaries from 8th January, 2002 till the date of issuance of the order granting promotion in favour of the petitioner within two months from the date of receiving the copy of this order.

Rule is made absolute accordingly with no order as to costs.

Direct Service permitted.

Date : 7.7.2003 [H.K.Rathod, J.]

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